

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARK DANIEL ROLLINS,

Plaintiff,

v.

PIERCE COUNTY CORRECTIONAL
FACILITY, CORRECTIONS OFFICER
PAPP, SGT. HARDGROVE, AND
CORRECTIONS OFFIER SHA VIRI,

Defendants.

No. C10-5438 RBL/KLS

ORDER DENYING MOTION FOR
DEFAULT

Before the court is Plaintiff's motion for default. Dkt. 17. Plaintiff contends that Defendants have failed to answer or otherwise defend within twenty days of service of the summons and complaint and are therefore, in default. Plaintiff's motion will be denied.

DISCUSSION

Rule 55, which governs the entry of default, provides for the entry of default when a party fails to plead or otherwise defend. Federal Rule of Civil Procedure 55. On July 29, 2010, the court entered an Order directing service of Plaintiff's complaint. Dkt. 8. The Order explicitly states that "[e]ach Defendant who timely returns the signed Waiver (of Service of Summons) shall have sixty (60) days after the date designated in the Notice of Lawsuit to file and serve an answer or a motion directed to the complaint, as permitted by Rule 12 of the Federal Rules of Civil Procedure." *Id.*, pp. 1-2 (emphasis in original). The Clerk mailed Waivers of Service of

1 Summons with copies of the complaint, to Defendants Pierce County Correctional Facility and
2 Defendants Papp, Shaviri, and Hardgrove. Dkts. 10, 11, 12, and 13. On September 21, 2010,
3 Defendants Pierce County Correctional Facility, Sgt. Hardgrove, and Corrections Officer Shaviri
4 filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) in lieu of an
5 answer to the complaint. Defendant Corrections Officer Papp reserved the right to file his
6 answer following a ruling on the motion to dismiss. Dkt. 19.

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8 As noted above, the waivers of summons expressly acknowledge receipt of the
9 complaint, waive service of the summons and Complaint, and provide that an answer or motion
10 directed to the complaint is due within sixty days. The record reflects that Defendants have filed
11 a motion to dismiss in lieu of an answer.

12 Accordingly, Plaintiff's motion for default judgment (Dkt. 17) is **DENIED**.

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15 DATED this 4th day of October, 2010.

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18 Karen L. Strombom
19 United States Magistrate Judge
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